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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JESUS LUNA,

Plaintiff,

v.

WELLS FARGO BANK, N.A., et al.,

Defendants.

Case No. ED CV 14-0720 FMO (DTBx)

**ORDER DISMISSING ACTION WITH
PREJUDICE AS TO PLAINTIFF AND
WITHOUT PREJUDICE AS TO THE
PUTATIVE CLASS**

The court has received plaintiff's Notice of Voluntary Dismissal Without Prejudice Pursuant to Federal Rule of Civil Procedure 41 (a)(1)(i), filed on May 6, 2014. Because defendant Wells Fargo Bank, N.A. has filed a Motion to Dismiss Plaintiff's Complaint, (see Motion to Dismiss Complaint), the court will construe plaintiff's filing as a Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 41(a)(2).

Once an answer has been filed to the operative complaint, a plaintiff may dismiss an action only by court order and on terms that the court considers proper. See Fed. R. Civ. P. 41(a)(2). Although defendant has filed a motion to dismiss the Complaint, that is an insufficient basis to deny plaintiff's request for dismissal. See, e.g., Hamilton v. Firestone Tire & Rubber Co., Inc., 679 F.2d 143, 146 (9th Cir. 1982) ("The very purpose of Rule 41(a)(2) is to allow a District Court, in its discretion, to dismiss an action without prejudice even after responsive pleadings have been filed by the defendant."); see also id. at 145 ("The Ninth Circuit has long held that the decision to

1 grant a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the District
2 Court[.]”). Under the circumstances, the court is persuaded that defendant will not suffer any legal
3 prejudice by the dismissal of the Complaint without prejudice. See id. (“In ruling on a motion for
4 voluntary dismissal, the District Court must consider whether the defendant will suffer some plain
5 legal prejudice as a result of the dismissal.”); Waller v. Financial Corp. of Am., 828 F.2d 579, 583
6 (9th Cir. 1987) (“In this circuit, as elsewhere, a district court should grant a motion for voluntary
7 dismissal unless a defendant can show that it will suffer some plain legal prejudice as a result.”).

8 Based on the foregoing, IT IS ORDERED THAT:

9 1. Plaintiff’s Notice of Voluntary Dismissal Without Prejudice Pursuant to Federal Rule
10 of Civil Procedures 41 (a)(1)(i) (**Document No. 13**) shall be **construed** as plaintiff’s Motion to
11 Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 41(a)(2). Plaintiff’s motion is
12 **granted**.

13 2. Judgment shall be entered dismissing the action without prejudice.

14 3. The Clerk shall serve copies of this Order and the Judgment on all parties.

15 Dated this 7th day of May, 2014

16 /s/

17 Fernando M. Olguin
18 United States District Judge
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